

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the
Invasive Species/Infested Waters Civil
Citation Issued to Stephen J. Logan;
Citation No. 172341

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

A hearing was held by telephone on September 27, 2012, pursuant to a Notice of Prehearing Conference and Notice of Hearing issued on September 12, 2012.

Appearances: Conservation Officer Jackie Glaser, on behalf of the Department of Natural Resources (Department); Stephen J. Logan, on his own behalf.

The parties agreed that no formal hearing would be needed and that the Administrative Law Judge could make a recommendation based on the record created during the Prehearing Telephone Conference. The parties were placed under oath, and their testimony was taken. The hearing record closed at the end of the telephone hearing on September 27, 2012.

STATEMENT OF THE ISSUE

Did Mr. Logan violate Minn. Stat. § 84D.13,¹ by transporting a prohibited invasive species (zebra mussel)?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF THE FACT

On August 3, 2012, a member of the Carver County Watercraft Inspection Program was on patrol at Lake Minnewashta Regional Park. Mr. Logan's wife and son arrived intending to go boating. The boat was inspected and a single zebra mussel was found lodged in a small screw hole in the back of the boat.

The Inspector removed and bagged the zebra mussel. He then got the license and registration for the boat. He told Mrs. Logan and her son they could not put the boat in the water and that the boat needed to be cleaned. The Inspector did not mention anything about a ticket.

¹ Minnesota Statutes are cited to the 2010 Edition.

The Inspector emailed the information about the stop as well as the license and registration information to Conservation Officer Jackie Glaser. The zebra mussel collected from Mr. Logan's boat was later delivered to Officer Glaser.

On August 10, 2012, Officer Glaser went to the Logan's home where she met with Mrs. Logan and her son. She saw the boat. It was clean and did not have any zebra mussels on it. She spoke with Mrs. Logan and her son and they confirmed the information that the Watercraft Inspector had emailed to Officer Glaser, specifically, that a zebra mussel was found on the boat. Mrs. Glaser and her son were very cooperative. At no time during her meeting with the Logans did Officer Glaser mention a ticket or citation.

Minnesota Statutes § 84D.13, subd. 4(1) allows conservation officers to issue warnings or citations to a person who "unlawfully transports prohibited invasive species or aquatic macrophytes."

Mr. Logan does not dispute a zebra mussel was on his boat and he does not dispute any of Officer Glaser's testimony.

Mr. Logan testified he is conscientious about cleaning his boat. He does not boat often, but he makes it a point to keep his boat clean. Mr. Logan is often complimented on his boat's appearance. He understands the importance of controlling the spread of invasive species, especially zebra mussels.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSION

Pursuant to Minn. Stat. § 84D.13, subd. 8, an appeal of a civil citation shall be considered under the procedures in Minn. Stat. § 116.072, subd. 6, if the person who received the citation requests a hearing within 15 days after receipt of the citation. Mr. Logan filed a timely appeal and request for hearing.

Mr. Logan violated Minn. Stat. § 84D.13, subd. 4(1), on August 3, 2012, by transporting an invasive species, specifically a zebra mussel.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum incorporated herein, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the civil citation issued to Stephen J. Logan be AFFIRMED.

Dated: October 26, 2012

s/James E. LaFave

JAMES E. LAFAVE
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The final order of the Commissioner may be appealed, pursuant to Minn. Stat. §§ 14.63 and 14.69.

MEMORANDUM

The Minnesota Legislature mandated that conservation officers receive “appropriate training” before they are authorized to issue “warnings or citations”.² The fact the Legislature authorized conservation officers to issue either “warnings” or “citations” clearly implies there is an element of discretion.

The offense in this case was not observed first hand by a trained conservation officer. Instead, the stop, the inspection of the boat and the assessment of attendant facts and circumstances was performed by a member of the Carver County Watercraft Inspection Team.

Watercraft inspectors are not authorized by the law to issue citations. They do not have the training, experience and discretion that come with being a conservation officer.

Mr. Logan does not dispute a zebra mussel was lodged in a small screw hole on the back of his boat when it was pulled onto the boat launch. In essence, Mr. Logan admitted to transporting a zebra mussel in violation of the statute. Mr. Logan, however,

² See Minn. Stat. § 84D.13, subd. 4.

does not believe the citation was appropriate because he is extraordinarily meticulous about keeping his boat clean. However, despite his meticulous efforts, on that occasion a zebra mussel was missed while he cleaned his boat. Unfortunately, that was all it took to violate the statute. Mr. Logan was doing his best to comply with the law.

The spread of invasive species is a serious problem, one that Mr. Logan appreciates. The Department is short of trained conservation officers and there are way too many boat launches and landings for them to patrol. The use of watercraft inspection teams is a creative way to address the problem.

The evidence presented at the hearing revealed this was a case where the discretion of a conservation officer at the scene may have come into play.

While the citation was properly issued, it is within the discretion of the Commissioner to affirm the citation or to reduce the citation to a warning. Under the facts of this case, the Commissioner would be justified in reducing the citation to a warning.

J.E.L.